



**SCOTTSDALE AIRPORT ADVISORY COMMISSION
SPECIAL PUBLIC MEETING
Scottsdale Airport Terminal Lobby
15000 N. Airport Drive, Scottsdale, AZ**

November 21, 2011

MINUTES

PRESENT: Gunnar Buzzard, Chairman
Michael Goode, Vice-Chairman
William Bergdoll (Telephonic)
Ken Casey
William Schuckert
Steve Ziomek

STAFF: Shannon Johnson, Management Analyst
Gary P. Mascaro, Aviation Director

OTHERS: Tony Garcia, FAA (Telephonic)

CALL TO ORDER

Chairman Buzzard called the special meeting to order at 2:32 p.m.

ROLL CALL

A formal roll call confirmed the presence of Commissioners as noted above.

REGULAR AGENDA ITEM 1

1. Discussion and Possible Action Regarding Land Use Compatibility around the Airport

Chairman Buzzard noted that Mr. Tony Garcia of the FAA would be joining the meeting via telephone. This special meeting was convened to discuss one item only, possible action regarding land use compatibility around the Airport.

Aviation Director Mr. Gary Mascaro recalled that at their November 9 meeting, the Airport Advisory Commission voted to request a discussion on this item. The Commissioners had

requested that an FAA compliance representative join the meeting. Mr. Garcia is the Regional Compliance Officer, and he has undertaken to attend telephonically.

Chairman Buzzard stated that former Commissioner Mr. John Washington had sent an email to the FAA requesting an inquiry and clarification as to issues relative to land use and compatibility around the Airport. He received a response from Mr. Garcia, who has over 20 years' experience in airport compatibility and compliance issues. He has decades of experience in residential encroachment and noise issues relative to various municipal airports.

Chairman Buzzard said that while decisions which have already been taken may not be reversed, he believes there is a significant amount of data, information, and comments that Mr. Garcia can share relative to decisions the City is making. Chairman Buzzard believes these decisions affect the Airport both in the near and the long term.

He noted that everyone present has probably read the response Mr. Garcia sent to Mr. Washington. This email makes it very clear that the decision to allow these residential applications is "unwise" and "should be avoided." However, Chairman Buzzard pointed out that the decisions which have been made are perfectly legal. The FAA's position is that this is not operating within the spirit or intent of the land use elements, procedures, process, and regulations that the City has put in place. He added that this is probably the nicest way the FAA can tell the City that they are not doing things right in terms of their investment in the Airport.

Approximately two weeks ago the Aviation Director, himself, and Mr. Paul Katsenes, Executive Director of Community and Economic Development, had an opportunity to discuss these issues with Mr. Garcia in a conference call. Two major topics came up in their discussion. Mr. Garcia is very familiar with Scottsdale and the Airport's Part 150 Noise Compatibility Program, and how Part 150 relates to other airports.

Chairman Buzzard explained that he and Mr. Garcia discussed Chapter 7, Land Use Elements I and II. These were mentioned to City Council at the meetings on October 5 and 12. He provided copies of the Land Use Elements I and II to the Commissioners. Land Use Element 1 states that they should strongly discourage rezoning for residential and other noise sensitive land uses not consistent with the General Plan. This exactly fits the entire scenario of the three parcels the City has been dealing with. Land Use Element I also states that the City of Scottsdale should maintain current commercial and industrial zoning designations within the study area and should encourage the City of Phoenix to do likewise. He added that the study area is the Airport Influence Area.

Mr. Garcia joined the meeting by telephone and was welcomed by Chairman Buzzard, who stressed that the Commission is not seeking a direct, unequivocal opinion from the FAA today. His comments regarding what the City is doing have spurred them to clearly understand what the FAA means and intends.

Two land use elements are at play here. The first is relative to parcels that are in the 55 dnl noise contour. In this area, compatible land use should be maintained to ensure compatible development in the future. The second part of the noise compatibility plan is Land Use Element II, which says that Scottsdale should retain and encourage the City of Phoenix to retain current commercial and industrial zoning designations within the study area (which is the Airport Influence Area). In addition both cities should strongly discourage rezoning for residential and

other noise sensitive land uses that are not consistent with their General Plan. Chairman Buzzard told Mr. Garcia that he appreciates the comments he made to Mr. Washington when the latter requested an inquiry.

Chairman Buzzard asked Mr. Garcia whether he would say that although legal, the City is not operating within the spirit or the intent of the land use elements.

Mr. Garcia said it is important to look at the consequences of not keeping the land uses compatible with the Airport. Using the 55 dnl noise contour is in fact a higher level of service to the goal of land compatibility. The other side of that coin is keeping the land so that citizens do not become irritated by noise. This protects citizens from the consequences of airport operations. Once the standards are relaxed citizens are exposed to the consequences of airport operations, which are generally negative. A vocal minority is quick to protest if their quality of life and/or their private property rights are infringed. They begin a crusade against the airport in question. Mr. Garcia said he has seen this for years in different cities. He pointed out that citizens vote but airports cannot, and the squeaky wheel gets the grease. The airport is then made to accommodate the residents. Policies like Scottsdale has of trying to avoid flying over the residential areas work for a while, but not perfectly. He added that people living near airports are now concerned about emissions. This is happening in Los Angeles. The City of Santa Monica has imposed restrictions on airport operations and is trying to downsize the airport there. The City Council of Los Angeles and Los Angeles County support restrictions on Santa Monica Airport. Even Federal Congressmen support various restrictions. With this type of political and social pressure, airports generally succumb.

Mr. Garcia said Scottsdale has many similarities with Santa Monica. Scottsdale Airport has high activity with diverse aircraft. It serves a community who use a wide range of aircraft. He opined that if Santa Monica Airport is downsized or closed, the effect on the Los Angeles basin would be devastating, as the aircraft that use it would not be welcome at any other local airport. This situation has been brewing for a number of years.

Chairman Buzzard thanked Mr. Garcia for his presentation. He clarified that the projects currently in question in Scottsdale are to be rental apartments. He asked Mr. Garcia what his experience has been with rented units and public pressure. Mr. Garcia said in his opinion the most serious incompatible land use is home ownership next to an airport. Apartment dwellers can always move elsewhere. The projects are located outside of the 55 dnl noise contour so perhaps they will not react as negatively. On the other hand his own homeowners association monitors the noise at Torrance Airport although they are not severely impacted by it.

Chairman Buzzard asked about noise sampling reports. Mr. Garcia said in his position he does not see those studies.

Chairman Buzzard asked him about efforts against municipal airports. Mr. Garcia recalled attending a meeting with representatives from the Board of Supervisors Office regarding noise at El Monte Airport in Los Angeles County. The residents were civil but very vocal in their demands to curtail helicopter operations. The homes about the airport so they are exposed every day. What generally happens is that a limited number of persistent complainers create a fuss. Unlike an election, the complainers do not need to be in the majority to be effective.

Vice Chairman Goode said the developers have argued that the units will be occupied by renters, who do not complain. However a landlord with many vacant units potentially could

have much influence with City Council. He asked whether Mr. Garcia has seen low rental occupancy rates lead to political pressure from landlords. Mr. Garcia said he cannot differentiate between home owners and renters. It is inevitable when people live next to an airport. Developers always rationalize and give assurances that these problems will not arise, but they do. One can speculate that renters may not protest as vociferously as home owners. People renting high end apartments have quality of life expectations.

Vice Chairman Goode said the developers have said they will build the apartments above code standards. He believes this is a slippery slope that could lead to a situation like Santa Monica's eventually. He voted against the proposal. Technically they are not in violation of the grant assurances but at the same time they are headed towards extinction, in his opinion.

Mr. Garcia agreed that there will be a growing expectation that the Airport can be restricted. Once they have allowed something to happen, he noted that government officials have a hard time saying no. He predicted more applications for housing, perhaps even closer to the Airport.

Vice Chairman Goode noted that the Ironwood community is outside of the 55 dnl noise contour, was built after the Airport opened, and is a major source of noise complaints. Although developers argue that renters will not complain, he feels that if renters like the area and do not want to move, they will still complain. Mr. Garcia agreed with him, saying that quality of life interests are just as important as private property interests. Vice Chairman Goode commented that renters also have more opportunities to band together, because they live in the same complex. The developers have said the apartments will be targeted at high income people, who will have some clout and higher expectations of their community. He thanked Mr. Garcia for his well thought out comments and for sharing his expertise. Vice Chairman Goode opined that by allowing the construction of these projects, the City is heading in the wrong direction.

Mr. Garcia said it is tough to persuade elected officials who operate in the present that the consequences of their actions may have negative impacts in the future.

Commissioner Ziomek asked Mr. Garcia to address the FAA's role in deciding the different reporting points are designed and selected. As an example, two of the parcels in question are within 200 feet vertically and horizontally of the approach and departure reporting points for helicopters. Mr. Garcia said changing the reporting points could be a Herculean task. It takes time for the control tower to change procedures. Helicopters draw residents' ire faster than any other aircraft. He recalled the activity of news helicopters when a freeway bridge was being demolished in Los Angeles. After that some elected County and Federal officials proposed restrictions on helicopters. He warned that the presence of helicopters near apartment buildings can be a bigger irritant resulting in an even quicker negative reaction. If helicopters are flying just 200 feet above apartments some tenants will certainly be very disturbed.

Commissioner Casey asked Mr. Garcia whether the Airport may risk losing grant assurances because the City approved these projects. Mr. Garcia said the grants are not jeopardized because two of the projects are outside of the 55 dnl noise contour. However, Part 150 identifies the 65 dnl noise contour line as the demarcation point between compatible and incompatible uses. To jeopardize the grants, complaints would have to be serious. He said the consequences of incompatible uses are the reactions of the local people. The residents are immediately impacted.

Quoting from grant assurance number 21, Chairman Buzzard said that to restrict the use, the City will take appropriate action to the extent reasonable, including the adoption of zoning laws to restrict the use of land adjacent to or in the immediate vicinity of the Airport. He asked Mr. Garcia whether "adjacent to or in the immediate vicinity of the Airport" would be the Airport Influence Area. Mr. Garcia said that would be a reasonable definition, however they are given leeway to define it. The noise area depends on the approach and departure patterns for both fixed wing aircraft and helicopters. Mr. Garcia added that the average layperson probably thinks the airport is the area where the actual airport sits and does not realize that the airport influence area extends well beyond that. Within the influence area noise levels vary. Unfortunately planners and elected officials may not be aware of this and not take it into account when considering proposals for residential development. Hearing assurances from developers, they may discount the airport influence area, resulting in incompatible developments. He summarized that it is a gray area, not a black and white one.

Chairman Buzzard said he is concerned about direct helicopter activity as mentioned by Commissioner Ziomek. Quoting further from grant assurance number 21, he noted that the City will not cause or permit any change in land use within its jurisdiction that will reduce compatibility with respect to the Airport. He said for the purpose of argument, jurisdiction is what was just discussed relative to land adjacent to or in the immediate vicinity of the Airport. He asked Mr. Garcia whether 65 dnl is the textbook definition of the demarcation between compatible and incompatible uses. Mr. Garcia said the problem is that the FAA is admonishing the sponsor not to change land use standards. If a city sets a stringent standard outside of the 65 dnl noise contour and then relaxes it, they should not be doing that from the FAA's standpoint because it will have a negative impact on the airport, but the city has the legal authority to do this. It is not a violation, although he described it as unwise.

Chairman Buzzard asked Mr. Garcia about avigation easements and noise disclaimers given to residents when they move in. Mr. Garcia said that should be part and parcel of any change in the noise standards. Chairman Buzzard asked whether they work over a 20 to 30 year period. Mr. Garcia replied that it does not stop people from complaining. However it is good practice to have these in place. There can even be covenants in the deed requiring the homeowner to relinquish the right to sue regarding noise. If he then sues, he is liable for all the legal expenses. He said perhaps this could also be put into a tenant's lease agreement. This is not common, but is one possible strategy. Mr. Garcia agreed with Chairman Buzzard that these strategies are not effective in preventing complaints. It is a deterrent, he summarized, not a preventative measure.

Thanking Mr. Garcia again for his time and comments, Chairman Buzzard asked whether he would be able to attend a possible work study session between the Airport Advisory Commission and City Council. Mr. Garcia said he would be prepared to attend via conference call.

Commissioner Casey thanked Chairman Buzzard and Mr. Mascaro for setting up this meeting, saying how great it was to hear directly from an FAA official. If a similar issue arises in the future, it would be good to have this conversation before City Council votes. Several Commissioners echoed his remarks.

Chairman Buzzard summarized that Mr. Garcia said the Airport has an inevitable problem, and that helicopters are the major source of resident complaints. Commissioner Ziomek said it would be good for City Council to hear from Mr. Garcia. Chairman Buzzard said this is

information that would be good to put before City Council so that Council members can understand the FAA's position.

Chairman Buzzard made a motion to request a work study session with City Council to discuss land use compatibility around the Scottsdale Airport. Vice Chairman Goode seconded the motion.

Chairman Buzzard elaborated that Mr. Garcia or another FAA representative would attend either in person or via teleconference to make sure that this data is relayed to Council fairly, appropriately, and accurately.

The motion carried by a unanimous vote of six (6) to zero (0).

Commissioner Bergdoll said the discussion with Mr. Garcia covered the issues well and he agrees with everything that was said.

ADJOURNMENT

With no further business to discuss, being duly moved and seconded, the meeting adjourned at 3:26 p.m.

Respectfully submitted,

A/V Tronics, Inc. DBA AVTranz